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OCTOBER TERM, 1959

No. [redacted] 126

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION INVOLVED

Can the State of South Carolina, by virtue of the provisions of 12 U. S. C. 1464 (h), legally subject Petitioner to the assessment of documentary stamp taxes levied upon promissory notes executed by Petitioner in Laurens, South Carolina, to the Federal Home Loan Bank of Greensboro, North Carolina.

STATEMENT

Petitioner's statement is in the main fair and full and with the exception of the last paragraph under the sub-title "The Federal Home Loan Bank System" (Petition, p. 6), is endorsed by Respondent.

As to the paragraph excepted, the Statement disassembles the wording of 12 U. S. C. 1433 and 12 U. S. C. 1464 (h) and restates the statutes to advance Respondents' argumentative position. The Statutes involved are otherwise fully set forth in the Petition, hence are not recited herein.

ARGUMENT

The Petition in this matter presents no showing that the Supreme Court of South Carolina has decided a federal question of substance not theretofore determined by this Court, nor does it present a showing that the Supreme Court of South Carolina has decided a federal question of substance in a way probably not in accord with applicable decisions of this Court, nor does it present any sound reason for review by this Court.

The notes in question were executed in Laurens, South Carolina. The taxes assessed are by virtue of the provisions of Section 65-688 of the Code of Laws of South Carolina. South Carolina may validly impose a stamp tax upon promissory notes executed within the State although payable outside of the State. *Graniteville Mfg. Co. v. Query et al.*, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126.

To an extent, the Petitioner is an instrumentality of the Federal government, however, it is not such an instrumentality as *ipso facto* clothes it with immunity from taxation. Although *State v. Minnesota Federal Savings & Loan Association*, 218 Minn. 229, 15 N. W. (2d) 568, holds that an Association is free from taxation except as permitted by congress, this case goes further and sets forth the purpose of the statutory exemption provided to the Associations, as follows:

> "The act of Congress uses these words, 12 U. S. C. A., § 1464 (h): 'other similar local mutual or cooperative thrift and home financing institutions.' The purpose was to protect federal associations from discrimi-

natory taxation which would put them on any less favorable basis than state building and loan associations."

Other cases decided by this Court do not make so bold a statement as found in *State v. Minnesota Federal Savings & Loan Association*, as regards tax immunity of United States instrumentalities.

It was said in the case of *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384, as follows:

> "Just what instrumentalities of either a state or the Federal government are exempt from taxation by the other cannot be stated in terms of universal application. • • •
>
> "As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation."

The recent case of *United States of America et al. v. City of Detroit*, 355 U. S. 466, 495, 78 S. Ct. 474, 486, 2 L. Ed. (2d) 424, 460, states as follows:

> "Today the United States does business with a vast number of private parties. In this Court the trend has been to reject immunizing these private parties from nondiscriminatory state taxes as a matter of constitutional law. Cf. *Penn-Dairies v. Milk Control Commission*, 318 U. S. 261, 270, 87 L. Ed. 748, 753, 63 S. Ct. 617. Of course this is not to say that Congress, acting within the proper scope of its power, cannot confer immunity by statute where it does not exist constitutionally. Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such com-

plex problems are ones which Congress is best qualified to resolve. As the Government points out, Congress has already extensively legislated in this area by permitting States to tax what would have otherwise been immune."

In accord with the purposes and operation of Federal Savings & Loan Associations and in line with the applicable decisions of this Court, it seems readily apparent that Petitioner is not such a Federal instrumentality as entitles it to exemptions greater than specifically provided by statute.

The contention, that the assessed taxes are forbidden by Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U. S. C. 1433, is specious and does not stand the test of reason. No tax is assessed against the Bank and none paid by it, nor is the Bank a party to this action. The documentary stamp taxes assessed are, as stated in *Graniteville Mfg. Co. v. Query et al., supra*:

"• • • simply a tax levied in relation to an act done within the state in making an instrument."

The case of *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, was properly distinguished by the Supreme Court of South Carolina. In the *Pittman case*, the Home Owners' Loan Corporation was itself assessed although the Corporation was immune from such tax by virtue of the Federal Statute, and was itself a party to the action, and itself offered for record the mortgage sought to be taxed. In the instant matter, patently, no tax is levied upon the bank, its advances, or against any asset of the bank or its advances. The tax is levied upon the petitioning Association in relation to an act done by it within the state in making an instrument.

The documentary stamp taxes assessed are precisely the same in kind and rate as are levied against State chartered Building and Loan Associations with respect to notes